

152 FERC ¶ 62,113
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

5440 Hydro, Inc.

Project No. 13806-004

ORDER GRANTING EXEMPTION FROM LICENSING
(10 MW OR LESS)

(Issued August 14, 2015)

1. On July 28, 2014, as supplemented on November 28, 2014 and April 2, 2015, 5440 Hydro, Inc. (5440 Hydro or applicant) filed an application to exempt its proposed 600-kilowatt (kW) Brooklyn Dam Hydroelectric Project (Brooklyn Dam Project or project) from the requirements of Part I of the Federal Power Act (FPA).¹ The project will be located on the Upper Ammonoosuc River in Coos County, New Hampshire.² The project will not use or occupy any federal facilities or land. As discussed below, this order issues an exemption from licensing for the project.

BACKGROUND

2. On April 23, 2015, the Commission issued a notice accepting the application and indicating the application was ready for environmental analysis.³ The notice established

¹ The Commission is authorized to exempt from the licensing requirements of Part I of the FPA, small hydroelectric projects with an installed capacity of 10 megawatts or less (formerly 5 megawatts or less) that use for the generation of electricity either an existing dam (*i.e.*, one in existence on or before July 22, 2005) or a "natural water feature" without the need for any dam or impoundment. *See* sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2705 and 2708 (2012), *amended by* the Hydropower Regulatory Efficiency Act of 2013, Pub. L. No. 113-23, 127 Stat. 493 (2013) (amending, *inter alia*, section 405 to define "small hydroelectric power projects" as having an installed capacity that does not exceed 10 megawatts).

² The Upper Ammonoosuc River is a tributary of the Connecticut River, a navigable waterway of the United States. *See Concord Electric Company*, 4 F.P.C. 635 (1944). Because the project will be located on a stream over which Congress has jurisdiction under the commerce clause, affect interstate commerce through its connection to an interstate power grid, and involve post-1935 construction, it is required to be licensed (or exempted from licensing) by the Commission pursuant to section 23(b)(1) of the FPA. *See* 16 U.S.C. § 817 (2012).

³ 80 Fed. Reg. 24,910 (May 1, 2015).

May 25, 2015, as the deadline for filing motions to intervene, comments, recommendations, and terms and conditions.⁴ On May 21, 2015, the U.S. Department of the Interior (Interior) filed timely comments and terms and conditions. On April 23, 2015, and May 14, 2015, the New Hampshire Department of Environmental Services (NHDES) filed timely comments. No other filings were received in response to the notice.

3. An Environmental Assessment (EA) was prepared by Commission staff and is being issued concurrently with this order. The EA analyzes the effects of the proposed project and alternatives to it. The EA contains background information, analysis of impacts, and support for the requirements of this exemption from licensing. Based on the record of the proceeding, including the EA, granting an exemption from licensing for the Brooklyn Dam Project would not constitute a major federal action significantly affecting the quality of the human environment.

4. The comments and terms and conditions have been fully considered in determining whether, and under what conditions, to issue this exemption.

PROJECT DESCRIPTION

5. The Brooklyn Dam Project will use the water power potential of the existing 120-foot-long, 14-foot-high timber crib Brooklyn dam. The entire 120-foot length of the dam functions as a spillway and has a crest elevation of 878.73 feet National Geodetic Vertical Datum of 1929 (NGVD1929).⁵ Adjacent to the dam is an existing 43-foot-long floodgate structure with four 6.9-foot-wide, 10-foot-high floodgates. With the existing 2.50-foot-high flashboards installed on the 120-foot-long spillway, the dam creates a 26-acre impoundment with a normal water surface elevation of 881.23 feet NGVD1929.

6. In addition to the dam and impoundment, the project includes an existing 100-foot-long, 45-foot-wide forebay, with three 15.2-foot-wide, 15.5-foot-high trashracks

⁴ The Commission's Rules of Practice and Procedures provide that, if a filing falls on a Saturday, Sunday, holiday, or other day when the Commission is not open for business, the filing deadline does not end until the close of business on the next business day. 18 C.F.R. § 385.2007(a)(2)(2014). The filing deadline established by the notice was 30 days from issuance of the notice (i.e., May 23, 2015), which was a Saturday; therefore, by rule, the filing deadline was the close of business Monday, May 25, 2015.

⁵ In a letter filed on April 23, 2015, New Hampshire Department of Environmental Services stated that 5440 Hydro removed a non-operating sluice gate located adjacent to the spillway that resulted in extending the spillway length from 113 to 120 feet.

with 1.0-inch clear bar spacings.⁶ When the project is operating, water will pass through the trashracks and forebay structure into an existing 45-foot-long, 48-foot-tall, and 23-foot-high brick and concrete powerhouse containing two new 300-kW Kaplan turbine-generating units for a total installed capacity of 600 kW. Water from the turbines will be discharged into an existing 48-foot-long, 45-foot-wide tailrace. Power will be transmitted through a new 100-foot-long, 480-volt underground transmission line connecting the powerhouse electrical panel to three new single-phased transformers. A new 300-foot-long, 35.4-kilovolt above-ground transmission line will transmit power from the transformers to the regional distribution grid.

7. The proposed project boundary encloses all the project facilities described above.
8. 5440 Hydro proposes to operate the project in a run-of-river mode, whereby outflow from the project equals inflow at all times, and water levels in the impoundment will not be drawn down for electric generation. When operating, the project will bypass a 100-foot-long reach of the Upper Ammonoosuc River from the dam to the downstream end of the tailrace.
9. The two 300-kW turbines will each have a minimum hydraulic capacity of 33 cubic feet per second (cfs) and a maximum hydraulic capacity of 315 cfs. At flows less than 33 cfs (the minimum operating capacity of the project), the project will not operate and all flow will pass over the spillway or flashboards. At flows between 33 cfs and 630 cfs (the maximum operating capacity of the project), the project will operate and no flow will pass over the spillway or flashboards. At flows greater than 630 cfs, the project will operate at its maximum capacity and all remaining flow will pass over the spillway or flashboards.
10. The project will have an estimated average annual generation of 2,800 megawatt-hours.

FPA SECTION 30(c) CONDITIONS

11. Pursuant to section 405 of Public Utility Regulatory Policies Act (PURPA),⁷ 10-MW exemptions are subject to the requirements of section 30(c) of the FPA,⁸ which

⁶ 5440 Hydro will modify the existing trashracks to: (1) provide an approach velocity of 2.0 feet per second or less; (2) provide 1-inch or less clear bar spacing, and (3) extend the trashracks to the full depth of the intake opening. *See* Application for Exemption from Licensing, Project No. 13806-004, (filed July, 28, 2014), Exhibit F, sheet 2, general notes, item 6.

⁷ 16 U.S.C. § 2705(b) (2012).

provides, among other things, that the Commission “shall include in any such exemption . . . such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service, and the State [fish and wildlife] agency each determine are appropriate to prevent loss of, or damage to, [fish and wildlife] resources . . .” Article 2 of all exemptions requires compliance with the terms and conditions filed by federal and state fish and wildlife agencies to protect fish and wildlife resources (section 30(c) conditions).⁹

12. On May 20, 2015, Interior submitted 11 section 30(c) conditions that require the exemptee to: (1) operate the project in an instantaneous run-of-river mode; (2) conduct an assessment of dewatered habitat in the bypassed reach; (3) install full-depth trashracks with an approach velocity of 2.0 feet-per-second or less and a 1-inch or less clear bar spacing; (4) conduct water quality monitoring for a minimum of 3 years after the start of project operation; (5) develop a plan for monitoring and maintaining run-of-river operation; (6) construct upstream and downstream fish passage facilities when notified by the agencies that such facilities are necessary; (7) pass 90 percent of inflow downstream during refilling of the impoundment after flashboard failure, maintenance, or emergency drawdowns; (8) notify FWS when the project commences operation and provide a set of as-built drawings; (9) allow FWS to inspect the project while it operates; (10) implement any additional or altered conditions required by Interior; and (11) incorporate in any conveyance (by lease or sale) of the project, the terms and conditions of the exemption.

13. The section 30(c) conditions are set forth in Appendix A of this order and are incorporated into the exemption by ordering paragraph (A).

THREATENED AND ENDANGERED SPECIES

14. Section 7 of the Endangered Species Act¹⁰ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species.

15. Two federally listed species, the Canada lynx (threatened) and the Northern long-eared bat (threatened), occur in Coos County, NH;¹¹ however, neither species has been documented in the immediate project area and there is no known habitat for these species

⁸ 16 U.S.C. § 823a(c) (2012).

⁹ See 18 C.F.R. § 4.106 (2014).

¹⁰ 16 U.S.C. § 1536(a) (2012).

¹¹ <http://ecos.fws.gov/ipac/>

in the project area. In the EA, Commission staff concludes that because these species are not known to inhabit the project area and the construction, operation, and maintenance of the proposed project would not substantially alter the existing environment, issuing an exemption order for the proposed project would have no effect on threatened or endangered species.¹² No further action under the Endangered Species Act is required.

NATIONAL HISTORIC PRESERVATION ACT

16. Under section 106 of the National Historic Preservation Act¹³ and its implementing regulations,¹⁴ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Office (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

17. The Brooklyn dam was constructed in 1912 to provide hydro-mechanical power to local textile mills. In 1930, hydroelectric generation facilities were installed at the project to provide power to the Groveton Paper Mill. These facilities were operated until the generating equipment was destroyed during a flood in the 1960's.

18. By letter dated January 31, 2014, the New Hampshire Division of Historical Resources (New Hampshire SHPO) indicated that issuing an exemption from licensing for the proposed project would have “no potential to cause effects” on historic properties.¹⁵ The EA concludes that because there are no historic properties within the project's area of potential affects, issuing an exemption from licensing for the project will have no adverse effect on historic properties.¹⁶

19. However, the exemptee may occasionally need to implement project modifications not specifically authorized or prohibited by this exemption, and these modifications could

¹² EA at 10.

¹³ Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306108, Pub. L. No. 113-287, 128 Stat. 3188 (2014).

¹⁴ 36 C.F.R. Part 800 (2014).

¹⁵ A copy of the New Hampshire SHPO letter was filed on February 10, 2014.

¹⁶ EA at 9.

affect cultural resources.¹⁷ Therefore, to ensure that cultural resources are not adversely affected by implementing project modifications, Article 26 requires the exemptee to consult with the New Hampshire SHPO prior to conducting any maintenance activities, land-clearing or land-disturbing activities, or changes to project operation or facilities that do not require Commission approval but could affect cultural resources.

20. While the project will have no adverse effect on known historic properties, cultural resources could be discovered during the course of constructing or operating the project; therefore, Article 27 requires the exemptee to stop work and consult with the New Hampshire SHPO if previously unidentified cultural resources are discovered during project construction or operation.

ADMINISTRATIVE PROVISIONS

21. All projects exempted from licensing under Part I of the FPA are subject to standard terms and conditions. These terms and conditions are included as standard Articles 1 through 9. Special Articles 10 through 27, which provide for administration of the exemption from licensing and dam safety, are also included in this exemption.

A. Annual Charges

22. The Commission collects annual charges from exemptees for the administration of its hydropower program.¹⁸ However, as explained in Article 10, under the regulations currently in effect, projects with an authorized installed capacity of 1,500 kW or less, like this project, are not currently assessed an annual charge.

B. Start of Construction

23. Standard Article 3 provides that the Commission may revoke the exemption if actual construction of the project's generating facilities has not begun within two years or has not been completed within four years from the date this exemption is granted. Additionally, Article 11 is included in this exemption and states that the Commission may terminate the exemption if the construction of any other project works described in this exemption has not begun within two years or is not completed within four years of the date this exemption is issued.¹⁹

¹⁷ Modifications could include replacing broken windows, roof or siding repairs, or landscaping. EA at 23.

¹⁸ See 18 C.F.R. § 11.1(b)(2) (2014).

¹⁹ The start-of-construction deadline in standard Article 3 (contained in the attached Form E-2) refers to the project's generating facilities. The deadline in special
(continued)

C. Exhibit F and G Drawings

24. The Commission requires exemptees to file sets of approved project drawings in electronic format. The six Exhibit F drawings F-1 through F-6 filed on November 28, 2014, are approved and made part of this exemption. The approved Exhibit F drawings must be filed in electronic file format as required by sections 4.39 and 4.41 of the Commission's regulations (Article 12).²⁰

25. The Exhibit G drawing G-1 filed on November 28, 2014, is not stamped by a registered land surveyor as required by section 4.39(a) of the Commission's regulations. Therefore, Exhibit G is not approved and not made part of this exemption. Article 13 requires the exemptee to file, within 45 days of issuance of this order, a revised Exhibit G drawing that is stamped by a registered land surveyor.

D. Project Safety

26. Ensuring the safety of all jurisdictional dams is an important public interest function of the Commission. A dam failure could result in property damage and could also result in significant negative environmental effects. In the interest of ensuring the safety of this project, Article 14 is included in this exemption and requires the exemptee to comply with Part 12 of the Commission's regulations, which governs the safety of water power projects and project works.²¹

E. Operation and Maintenance

27. Ensuring that the exempted project is operated and maintained as required by this exemption is an important public interest function of the Commission. Therefore, Article 15 is included in this exemption and states that if the exemptee causes or allows essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, the Commission will deem it the exemptee's intent to surrender the exemption.

F. Exemptee Liability

28. Section 10(c) of the FPA provides that licensees, and not the United States, are liable for "damages occasioned to the property of others by the construction,

Article 11 applies to on-the-ground construction of other project facilities.

²⁰ 18 C.F.R. §§ 4.39 and 4.41(g)-(h) (2014).

²¹ 18 C.F.R. Part 12 (2014). Special Article 13 is broader than standard Article 8 (contained in the attached Form E-2), which essentially is subsumed in special Article 13.

maintenance, or operation of the project works ...”²² To clarify that exemptees are similarly liable, Article 16 is included in this exemption and states that the exemptee is liable for damages to the property of others.

G. Conservation and Development of Fish and Wildlife Resources

29. Changes in environmental conditions or identification of previously unknown project effects on fish and wildlife resources may warrant changes to project requirements to protect fish and wildlife. Therefore, Article 17 provides that the Commission may on its own motion, or on the recommendation of the Secretaries of the Interior or Commerce or the state fish and wildlife agencies, require the exemptee to construct, maintain, and operate facilities for the conservation and development of fish and wildlife resources.

H. Project Financing

30. To ensure that there are sufficient funds available for project construction, operation, and maintenance, Article 18 requires the exemptee to file for Commission approval documentation of project financing for the construction, operation, and maintenance of the project at least 90 days before starting project construction.

I. Property Rights

31. Pursuant to 18 C.F.R. § 4.31(c)(2)(ii), an applicant for exemption is required to demonstrate that, at the time it files its exemption application, it has sufficient rights to any non-federal land and facilities required for the construction and operation of the project. 5440 Hydro’s application contains documentation that it has the necessary property rights to develop and operate the project.²³ However, because an exemption is

²² 16 U.S.C. § 803(c) (2012).

²³ 5440 Hydro’s application includes a fully executed contract of sale whereby Ampersand Brooklyn Dam Hydro, LLC (Ampersand Hydro) acquired all rights, title, and interest in the Brooklyn Dam site located on the Upper Ammonoosuc River, including: (a) the bed of the river; (b) the footbridge just south of the Brooklyn Dam that crosses the river; (c) the powerhouse; (d) land on the Brooklyn Street side of the river; (e) rights of way to the now Public Service Company of New Hampshire 34.5 kV power line and poles; and (f) appurtenant water rights, including river, water, and flowage rights associated with the Brooklyn Dam pursuant to its historic use for hydroelectric generation. See Application for Exemption from Licensing, Project No. 13806-004, Appendix B (filed July 28, 2014). 5440 Hydro’s application also includes a fully executed five year operating lease agreement between Ampersand Hydro and 5440 Hydro whereby Ampersand Hydro agrees to lease to 5440 Hydro all of its rights, title,

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issued in perpetuity, Article 19 is included in this exemption and reserves the Commission's authority to terminate the exemption if in the future the exemptee fails to maintain sufficient rights to comply with the terms and conditions of the exemption.

J. Commission Approval of Resource Plans, Notification, and Filing of Reports and Amendments

32. Certain section 30(c) conditions (Appendix A) either do not require the exemptee to file plans with the Commission for approval; do not require the exemptee to file reports with the Commission; require notice to Interior, but not the Commission, of emergencies and other activities; or contemplate unspecified long-term changes to project operation or facilities without prior Commission approval. Therefore, Article 20 requires the exemptee to file plans with the Commission for approval, file reports with the Commission, notify the Commission of planned and unplanned deviations from the exemption requirements, and file amendment applications, as appropriate.

K. Review of Final Plans and Specifications

33. To ensure the exemptee is constructing and operating a safe and adequate project, Articles 21 through 25 require the exemptee to provide the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Office, for its review and approval: contract plans and specifications, including a soil erosion and sediment control plan; cofferdam and deep excavation construction drawings, as appropriate; as-built drawings; a public safety plan; and project modifications resulting from environmental requirements.

34. The exemptee may not begin any construction until the D2SI – New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized, in writing, the start of construction.

The Director orders:

(A) Effective the date this order is issued, the Brooklyn Dam Hydroelectric Project is exempted from Part I of the Federal Power Act (FPA), subject to the conditions submitted by the U.S. Department of the Interior under section 30(c) of the FPA, as those conditions are set forth in Appendix A of this order and the articles specified below.

and interests in the project. *See id* at Appendix C. Under section 4.30(b)(28) of the regulations, 18 C.F.R. 4.30(b)(28)(2015), sufficient property rights for an exemption may be in the form of a lease.

(B) The project consists of:

(1) All lands, to the extent of the exemptee's interests in these lands, enclosed by the project boundary as described in the project description section of this order:

(2) The following project works: (1) an existing 120-foot-long and 14-foot-high, timber crib dam and spillway with a crest elevation 878.73 feet NGVD1929 that includes 2.50-foot-high flashboards with a crest elevation 881.23 feet NGVD1929; (2) a 43-foot-long floodgate structure with four 6.9-foot-wide, 10-foot-high floodgates; (3) an existing 26-acre impoundment having a gross storage capacity of 52-acre-feet at elevation 881.23 feet NGVD1929; (4) a new automatic controller and water level sensor; (5) an existing 100-foot-long, 45-foot-wide forebay with three 15.2-foot-wide, 15.5-foot-high trashracks with 1.0-inch clear bar spacing; (6) an existing 9-foot-wide, 9-foot-high side waste gate; (7) an existing 45-foot-long, 48-foot-wide, and 23-foot-high brick and concrete powerhouse that will contain two new 300-kilowatt (kW), Kaplan turbine-generating units for a total installed capacity of 600 kW; (8) an existing 40-foot-long, 15.78-foot-high tailrace training wall; (9) an existing 48-foot-long, 45-foot-wide tailrace; (10) a new 100-foot-long 480-volt underground transmission line connecting the powerhouse electrical panel to three new single-phase transformers; (11) a new 300-foot-long 35.4-kilovolt above-ground transmission line connecting the transformers to the regional distribution grid at utility pole number 384/15; and (12) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F below:

Exhibit A: Pages 1 through 3 filed on November 28, 2014.

Exhibit F: The following Exhibit F drawings filed on November 28, 2014:

<u>Exhibit F Drawing</u>	<u>FERC No. 13806-</u>	<u>Description</u>
F-1	1	Site Plan
F-2	2	Powerhouse and gates Detail and Elevation
F-3	3	End View And Spillway Section
F-4	4	Maintenance gates Detail
F-5	5	Trash racks Detail
F-6	6	Side Spillway Flash Boards Detail

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation

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or maintenance of the project.

(C) The Exhibits A and F described above are approved and made part of the exemption.

(D) This exemption is also subject to the articles set forth in Form E-2 entitled Standard Terms and Conditions of Exemption from Licensing, as reproduced at the end of this order, and the following additional articles:

Article 10. Administrative Annual Charges. The exemptee must pay the United States annual charges, effective as of the start of project construction, as determined in accordance with the provisions of the Commission's regulations in effect from time to time, for the purpose of reimbursing the United States for the cost of administration of the Commission's hydropower program. The authorized installed capacity for that purpose is 600 kilowatts. Under the regulations currently in effect, projects with authorized installed capacities of less than or equal to 1,500 kilowatts will not be assessed an annual charge.

Article 11. Start of Construction. The Commission may terminate this exemption if the actual construction of any project works has not begun within two years or has not been completed within four years from the issuance date of this exemption. If an exemption is terminated under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing for the same project within two years of the termination.

Article 12. Exhibit F Drawings. Within 45 days of the date of issuance of this exemption, as directed below, the exemptee must file two sets of the approved exhibit drawings in electronic file format on compact disks with the Secretary of the Commission, ATTN: OEP/DHAC.

(a) Digital images of the approved exhibit drawings must be prepared in electronic format. Prior to preparing each digital image, the FERC Project-Drawing Number (i.e., P-13806-1 through P-13806-6) must be shown in the margin below the title block of the approved drawing. Exhibit F drawings must be segregated from other project exhibits and identified as CEII material under 18 C.F.R. § 388.113(c). Each drawing must be a separate electronic file, and the file name must include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this exemption, and file extension in the following format [P-13806-1, F-1, MM-DD-YYYY.TIF]. All digital images of the exhibit drawings must meet the following format specification:

IMAGERY – black & white raster file
FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4
(also known as T.6 coding scheme)

RESOLUTION – 300 dots per inch (dpi) desired, (200 dpi minimum)
DRAWING SIZE FORMAT – 22” x 24” (minimum), 24” x 36”
(maximum)
FILE SIZE – less than 1 megabyte desired

Article 13. *Exhibit G Drawing.* Within 45 days of issuance of this exemption, the exemptee must file, for Commission approval, a revised Exhibit G drawing that is stamped by a registered land surveyor. The Exhibit G drawing must comply with sections 4.39 and 4.41 of the Commission’s regulations.

Article 14. *Part 12 Requirements.* This project is subject to Part 12 of the Commission’s regulations, 18 C.F.R. Part 12 (as they may be amended from time to time). For the purposes of applying these provisions of Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

Article 15. *Operation and Maintenance.* The Commission may determine that the exemptee has impliedly surrendered this exemption if essential project property is removed or destroyed or becomes unfit for use, without adequate replacement; or if the project is abandoned or good faith project operation or maintenance is discontinued; or if the exemptee refuses or neglects to comply with the terms of the exemption and the lawful orders of the Commission.

Article 16. *Liability.* This exemption is subject to the provisions of section 10(c) of the Federal Power Act, 16 U.S.C. § 803(c) (2012). That section provides that the exemptee must be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under this exemption; and in no event shall the United States be liable therefore.

Article 17. *Conservation and Development of Fish and Wildlife Resources.* The exemptee must, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior, the Secretary of Commerce, or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 18. *Documentation of Project Financing.* At least 90 days before starting construction, the exemptee must file with the Commission, for approval, the exemptee’s documentation for the project financing. The documentation must show that the exemptee has acquired the funds, or commitment for funds, necessary to construct the project in accordance with this order. The documentation must include, at a minimum,

financial statements, including a balance sheet, income statement, and a statement of actual or estimated cash flows which provide evidence that the exemptee has sufficient assets, credit, and projected revenues to cover project construction, operation, and maintenance expenses, and any other estimated project liabilities and expenses.

The financial statements must be prepared in accordance with generally accepted accounting principles and signed by an independent certified public accountant. The exemptee must not commence project construction until the filing is approved.

Article 19. Property Rights. The Commission reserves the right to require the exemptee to obtain additional property rights, if such rights become necessary to develop, operate, or maintain the project or to achieve compliance with the terms and conditions of the exemption. The Commission may terminate this exemption if, at any time, the exemptee does not hold sufficient property rights in the land or project works necessary to develop, maintain, and operate the project.

Article 20. Commission Approval, Reporting, Notification, and Filing of Amendments.

(a) Requirement to File Plan for Commission Approval

Condition 5 of the U.S. Department of the Interior's (Interior) conditions issued pursuant to section 30(c) of the Federal Power Act (Appendix A) requires the exemptee to prepare a plan for maintaining and monitoring run-of-river operation, but does not require that the plan be submitted to the Commission for approval. Within 6 months of issuance of this exemption and at least 3 months prior to commencing project operation, the exemptee must file the plan for Commission approval.

The exemptee must include with the plan, documentation that the plan has been approved by Interior's Fish and Wildlife Service (FWS). The Commission reserves the right to make changes to the plan. Upon Commission approval, the plan becomes a requirement of the exemption, and the exemptee must implement the plan, including any changes required by the Commission.

(b) Requirement to File Reports

Two measures in the section 30(c) conditions (Appendix A) require the exemptee to provide information or reports to FWS that document compliance with requirements of this exemption or could result in changes to project facilities or operations. The exemptee also must file this information with the Commission. These reports are listed below.

Interior 30(c) condition no.	Description	Due date
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2	Dewatered habitat assessment	Within 3 months of completion of the assessment and no later than 24 months from the issuance date of this order
4	Post-operation water quality monitoring survey	Within 3 months of completion of the third year of the survey and no later than 54 months from the issuance date of this order

The exemptee must submit to the Commission documentation of any consultation, and copies of any comments and recommendations made by Interior in connection with each report. The Commission reserves the right to require changes to project operations or facilities based on the information contained in the report and any other available information.

(c) Requirement to Notify Commission of Planned and Unplanned Deviations from Exemption Requirements

Various section 30(c) conditions allow the exemptee to temporarily modify project operation under certain conditions. The exemptee must notify the Commission according to the schedule provided below.

Interior 30(c) condition no.	Notification requirement	Due date
1	Notification of temporary modification of project operation	Within 10 days of each occurrence
7	Notification of temporary refill procedure modification	Within 10 days of each occurrence
8	Notification of when the project commences operation	Within 30 days of commencement of project operation

(d) Requirement to File Amendment Applications

Some section 30(c) conditions contemplate FWS ordering unspecified long-term changes to project operations or facilities based on new information or results of studies or monitoring required by the conditions, but do not require Commission approval for such changes (e.g., operational changes to mitigate for low dissolved oxygen, construction and operation of upstream and downstream fish passage facilities). Such changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the exemption.

Article 21. Commission's Review of Contract Plans and Specifications. At least 60 days prior to the start of any construction, the exemptee must submit one copy of its plans and specifications and a supporting design document to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission (one of these must be a courtesy copy to the Director, D2SI). The submittal to the D2SI – New York Regional Engineer must also include as part of preconstruction requirements: a Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan. The exemptee may not begin any construction activities until the D2SI – New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized the start of construction.

Article 22. Cofferdam and Deep Excavation Construction Drawings. Should construction require cofferdams or deep excavation, the exemptee must: (1) have a Professional Engineer who is independent from the construction contractor, review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction; and (2) ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of any cofferdams or deep excavations, the exemptee must submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer and two copies to the Commission (one of these copies must be a courtesy copy to the Director, D2SI) of the approved cofferdam and deep excavation construction drawings and specifications, and the letters of approval.

Article 23. As-built Drawings. Within 90 days of completion of construction of the facilities authorized by this exemption, the exemptee must file for Commission approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built. A courtesy copy must be filed with the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer; the Director, D2SI; and the Director, Division of Hydropower Administration and Compliance.

Article 24. Project Modification Resulting From Environmental Requirements. If environmental requirements under this exemption require modifications to the project that may affect project works or operations, the exemptee must consult with the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer. Consultation must allow sufficient review time for the Commission to ensure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 25. Public Safety Plan. Within 60 days of the issuance date of the exemption, the exemptee must submit one copy to the Commission's Division of Dam

Safety and Inspections (D2S1) – New York Regional Engineer and two copies to the Commission (one of these copies must be a courtesy copy to the Commission’s Director, D2SI) of a Public Safety Plan. The plan must include an evaluation of public safety concerns at the project site and assess the need for the installation of safety devices or other safety measures. The submitted plan must include a description of all public safety devices and signage, as well as a map showing the location of all public safety measures. For guidance on preparing public safety plans the exemptee can review the *Guidelines for Public Safety at Hydropower Projects* on the FERC website.

Article 26. Protection of Cultural Resources. Prior to implementing any project modifications not specifically authorized by this exemption, including but not limited to maintenance activities, land-clearing or land-disturbing activities, or changes to project operation or facilities, the exemptee must consult with the New Hampshire Division of Historical Resources (New Hampshire SHPO) to determine the effects of the activities and the need for any cultural resource studies or measures. If no studies or measures are needed, the exemptee must file with the Commission documentation of its consultation with the New Hampshire SHPO.

If a project modification is determined to affect a historic property the exemptee must file for Commission approval a historic properties management plan (HPMP) prepared by a qualified cultural resource specialist after consultation with the New Hampshire SHPO. In developing the HPMP, the exemptee must use the Advisory Council on Historic Preservation and the Commission’s *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, dated May 20, 2002. The HPMP must include the following items: (1) a description of each historic property; (2) a description of the potential effect on each historic property; (3) proposed measures for avoiding or mitigating adverse effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for implementing mitigation and conducting additional studies. The Commission reserves the right to require changes to the HPMP.

The exemptee must not implement any project modifications, other than those specifically authorized in this exemption, until informed by the Commission that the requirements of this article have been fulfilled.

Article 27. Protection of Undiscovered Cultural Resources. If the exemptee discovers previously unidentified cultural resources during the course of constructing, maintaining, or operating project works or other facilities at the project, the exemptee must stop all land-clearing and land-disturbing activities in the vicinity of the resource and consult with the New Hampshire Division of Historical Resources (New Hampshire SHPO) to determine the need for any cultural resource studies or measures. If no studies or measures are needed, the exemptee must file with the Commission documentation of its consultation with the New Hampshire SHPO.

If a discovered cultural resource is determined to be eligible for the National Register of Historic Places (National Register), the exemptee must file for Commission approval a historic properties management plan (HPMP) prepared by a qualified cultural resource specialist after consultation with the New Hampshire SHPO. In developing the HPMP, the exemptee must use the Advisory Council on Historic Preservation and the Commission's *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, dated May 20, 2002. The HPMP must include the following items: (1) a description of each discovered property that is eligible to be listed in the National Register; (2) a description of the potential effect on each discovered property; (3) proposed measures for avoiding or mitigating adverse effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for implementing mitigation and conducting additional studies. The Commission reserves the right to require changes to the HPMP.

The exemptee must not resume land-clearing or land-disturbing activities in the vicinity of a cultural resource discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

(E) The exemptee must serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(F) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2014). The filing of a request for rehearing does not operate as a stay of the effective date of this exemption or of any other date specified in this order. The exemptee's failure to file a request for rehearing shall constitute acceptance of this order.

Ann F. Miles
Director
Office of Energy Projects

Form E-2

FEDERAL ENERGY REGULATORY COMMISSION

Section 4.106 - Standard Terms and Conditions of Exemption from Licensing

Any exemption from licensing granted under this subpart for a small hydroelectric power project is subject to the following standard terms and conditions:

Article 1. The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

Article 2. The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or to otherwise carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

Article 3. The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the date on which this exemption was granted. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

Article 4. This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

Article 5. This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal agencies. The Commission may accept a license application by any qualified license applicant and revoke this exemption, if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.

Article 6. In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

Article 7. The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

Article 8. Any exempted small hydroelectric power project that utilizes a dam that is more than 33 feet in height above streambed, as defined in 18 C.F.R. § 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant or high hazard potential, as defined in 33 C.F.R. Part 222, is subject to the following provisions of 18 C.F.R. Part 12, as it may be amended:

- (1) Section 12.4(b)(1)(i) and (ii), (b)(2)(i) and (iii), (b)(iv), and (b)(v);
- (2) Section 12.4(c);
- (3) Section 12.5;
- (4) Subpart C; and
- (5) Subpart D.

For the purposes of applying these provisions of 18 C.F.R. Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

Article 9. Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.

APPENDIX A

Conditions submitted under section 30(c) of the FPA by the U.S. Department of the Interior on May 21, 2015.

1. The Exemptee shall operate the project in an instantaneous run-of-river mode, whereby inflow to the project will equal outflow from the project at all times, and water levels above the dam are not drawn down for the purpose of generating power. Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the Exemptee, or for short periods upon mutual agreement between the Exemptee, the U.S. Fish and Wildlife Service, and the New Hampshire Fish and Game Department.
2. The Exemptee shall within three (3) months of commencing generation, undertake a bypass reach assessment to determine the linear extent of habitat dewatered by the project during periods of no spill. The assessment shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service. Based on results of the assessment, the U.S. Fish and Wildlife Service may determine that discharging flow over the dam is warranted to protect stream habitat.
3. The Exemptee shall install trashracks that meet the following criteria: (1) have an approach velocity ≤ 2.0 fps (as measured six inches in front of the racks); (2) have clear spacing of one inch or less; and (3) extend full depth. The trashracks shall be installed and operational concurrent with project start-up. The racks shall be required to be kept free of debris and maintained to design specifications.
4. The Exemptee shall conduct a post-operation water quality monitoring survey. The survey protocol shall be developed in consultation with, and require the approval by, the U.S. Fish and Wildlife Service. Data shall be collected over a minimum of three (3) years, and shall be initiated the first low-flow season after project start-up. If results indicate that the project is not meeting water quality standards, mitigation measures may be required (e.g., releasing additional flow over the dam for reaeration).
5. The Exemptee shall, within six (6) months of the date of issuance of an exemption from licensing, prepare and file for approval by the U.S. Fish and Wildlife Service, a plan for maintaining and monitoring run-of-river operation at the project.

The plan shall include a description of the mechanisms and structures that will be used, the level of manual and automatic operation, the methods to be used for recording data on run-of-river operation, an implementation schedule, and a plan for maintaining the data for inspection by the U.S. Fish and Wildlife Service, the Federal Energy Regulatory Commission, and the New Hampshire Department of Environmental Services. The plan shall be developed in consultation with, and require approval by, the U.S. Fish and

Wildlife Service.

6. The Exemptee shall be responsible for constructing, operating, maintaining and evaluating upstream and downstream fish passage facilities at this project when notified by the U.S. Fish and Wildlife Service and/or the New Hampshire Fish and Game Department that such fishways are needed. All plans and schedules associated with the design, construction, and evaluation of any prescribed fishways shall be developed by the Exemptee in consultation with, and require approval by, the U.S. Fish and Wildlife Service. The fishways shall be operated and maintained in accordance with the schedule identified by the agencies.

7. **During refilling of the project reservoir after flashboard replacement, dam maintenance, or emergency drawdown, the Exemptee shall operate the project such that 90 percent of inflow to the project is released below the project and the impoundment is refilled on the remaining 10 percent of inflow.** This refill procedure may be modified on a case-by-case basis with the prior approval of both the U.S. Fish and Wildlife Service and the New Hampshire Fish and Game Department.

8. The Exemptee shall notify the U.S. Fish and Wildlife Service in writing when the project commences operation. Such notice shall be sent within 30 days of start-up to Supervisor, New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301. The Exemptee shall furnish the U.S. Fish and Wildlife Service with a set of as-built drawings concurrent with filing said plans with the Federal Energy Regulatory Commission.

9. The Exemptee shall allow the U.S. Fish and Wildlife Service to inspect the project area at any time while the project operates under an exemption from licensing to monitor compliance with their terms and conditions.

10. The U.S. Fish and Wildlife Service reserves the right to add to and alter terms and conditions for this exemption as appropriate to carry out its responsibilities with respect to fish and wildlife resources. The Exemptee shall, within thirty (30) days of receipt, file with the Federal Energy Regulatory Commission any additional terms and conditions imposed by the U.S. Fish and Wildlife Service.

11. The Exemptee shall incorporate the aforementioned terms and conditions in any conveyance—by lease, sale or otherwise—of its interests so as to legally assure compliance with said conditions for as long as the project operates under an exemption from licensing.

Document Content(s)

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